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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,343	02/26/2004	Guy Hubert Stephane Sylvain Culeron	AA-615M3	3968

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1796

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09/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/787,343

Applicant(s)STEPHANE SYLVAIN CULERON
ET AL.**Examiner**

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

1. This action is responsive to the amendment filed on June 20, 2008.
2. Claims 1-8, 11-15 are pending.
3. Claims 1-8, 11-15 **stand** provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 and 11-15 of copending Application No. **10/787,266** in view of Van Dijk et al. (US Patent No. 5,663,136) for the reasons set forth in the previous office actions.
4. Copending Application 11/386,921 now issues as US Patent No. 7,402,554. The provisional obviousness-type double patenting rejection over this copending application is withdrawn. Please see below the obviousness-type double patenting rejection over said patent.
5. The objection to the disclosure on page 17 is withdrawn in view of Applicants' amendment.
6. The objection to claims 1, 3, 4 and 5 for minor informalities is withdrawn in view of Applicants' amendment.
7. The rejection of claims 7, 11 and 12 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.

8. The rejection of claims 1-2, 4-8, 11-15 under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), by itself, or in the alternative, in view of Focaracci (US Patent No. 4,646,973) is withdrawn in view of Applicants' amendment.

9. The rejection of claim 3 under 35 U.S.C. 103(a) as being unpatentable over Petri, or Petri and Focaracci, as applied to the above claims, and further in view of Fowler et al. (US Patent No. 5,635,469) is withdrawn in view of Applicants' amendment.

10. The rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Petri, or Petri and Focaracci as applied to the above claims, and further in view of Boehm et al. (US Patent No. 3,422,993) is withdrawn in view of Applicants' cancellation of this claim.

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 1-8, 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), hereinafter "Petri" in view of Pritchett et al. (US Patent No. 6,612,468), hereinafter "Pritchett".

Petri teaches a microemulsion suitable for disinfecting a surface (see col. 2, lines 48-49), such as dishes (see col. 14, line 59), as well as animate surfaces (e.g., human skin, mouth and the like) comprising a surfactant, an aqueous phase comprising a bleach, and droplets dispersed in said aqueous phase, said droplets comprising an essential oil or an active thereof, and said droplets having a particle size of less than 100 nanometers (see abstract; col. 1, lines 6-12; col. 2, lines 48-53), which particle size is construed to read on “non-visible droplets of oil”. The microemulsion comprises from 0.01% to 40% by weight of the total microemulsion of a surfactant, or mixtures thereof (see col. 5, lines 4-8). A composition comprising the upper limit concentration of the surfactant above would read on protomicroemulsion. The aqueous phase of the microemulsion comprises at least water (see col. 8, lines 58-63) and may comprise as a preferred optional ingredient, a hydroxylated solvent (see col. 9, lines 51-53), such as glycol ethers (see col. 10, lines 1-25) and aliphatic alcohols such as ethanol (see col. 10, lines 45-53). The microemulsion may comprise as an optional ingredient, other solvents including terpene (see col. 11, lines 1-13), which terpene read on the “low water-soluble oil having a solubility in water of less than about 5000 ppm as required in claim 14. The microemulsion may further comprise a variety of other optional ingredients such as enzymes (see col. 11, lines 19-24). The microemulsion is also construed to read on Newtonian fluids. The microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, for example, spray dispenser, preferably in a trigger spray dispenser or in a pump spray dispenser, and may include manually operated foam trigger-type dispensers (see col. 16, lines 23-

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44). Petri, however, fails to specifically disclose the microemulsion in a foam generating dispenser which includes a gas imparting mechanism to form the foam from air via an air injection piston, foam-generating aperture, a mesh or net, a pump and sprayer, and the foam to weight ratio as those recited.

Pritchett teaches a hand operated non-aerosol foam dispenser comprising a combined liquid pump and air pump for mounting at the top of a container of foamable liquid, the liquid pump having a liquid cylinder and a liquid piston defining between them a liquid chamber, the air pump having an air cylinder and an air piston defining between them an air chamber, and the liquid piston and air piston being reciprocable together in their respective cylinders by the action of a pump plunger which carries said pistons; an air inlet valve and liquid inlet valve being provided for the air chamber and liquid chamber respectively; an air discharge passage and a liquid discharge passage leading from the air chamber and the liquid chamber respectively, the air discharge passage and liquid discharge passage meeting one another for mixing the pumped air and liquid which passes to an outlet passage of the dispenser by way of a permeable foam regulation element; one or more vent openings being provided to admit air into a cap chamber and into the air chamber through the air inlet valve (see abstract; claims). The preferred foam-generating element uses one or more layers of mesh to produce a uniform foam for discharge (see col. 3, lines 40-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the microemulsion of Petri in the non-aerosol foam dispenser of Pritchett because Petri teaches in col. 6, lines 23-44 that the

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microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, and Pritchett teaches such dispenser, and to reasonably expect the foam to weight ratio to be within those recited because similar ingredients and dispensers have been utilized.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1-3, 11 and 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 12, 16 of U.S. Patent No. **7,402,554** (issued from Application No. 11/386,921). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar foam-generating kit comprising an aerosol container and a

high surfactant microemulsion or protomicroemulsion having similar surfactant system concentration differing only in that US '554 requires glycerol. The "comprising" language of the present claims, however, is open to the inclusion of other ingredients such as glycerol.

Response to Arguments

15. Applicant's arguments with respect to claims 1-8, 11-15 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the obviousness-type double patenting rejections above, Applicants state that when any patentable subject matter is presented, a terminal disclaimer will be submitted.

The obviousness-type double patenting rejections above are maintained until such time Applicants submit a timely filed terminal disclaimer.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M Douyon/
Primary Examiner, Art Unit 1796

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